IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-976

LEVAN ROUNDTREE, et al,

Appellants,

against

STEPHEN BERGER, individually and as Commissioner of the New York State Department of Social Services, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, et ano,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

MOTION TO DISMISS OR AFFIRM ON BEHALF OF APPELLEES STEPHEN BERGER AND NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES

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TABLE OF CONTENTS

TABLE OF CASES

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Appellees Stephen Berger and New York State Department of Social Services move pursuant to Rules 16 and 14(2) of the Rules of this Court for dismissal of the appeal from the judgment of the United States District Court for the Eastern District of New York, entered September 30, 1976, dismissing the complaint. In the alternative, appellees move for affirmance of the judgment below.

Opinion Below

The opinion below is reported at 420 F. Supp. 282 (E.D.N.Y., 1976) and is reproduced in appellants' Jurisdictional Statement.

Jurisdiction

Appellants purport to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1253.

Statutes Involved

New York Social Services Law 131-i.

Title 18, New York Code of Rules and Regulations ("NYCRR") § 352.19c.

Questions Presented

1. Whether appellants' appeal should be dismissed because it was untimely docketed?

2. Whether New York's $80 ceiling on work related expenses deductions for "home relief" recipients violates the Equal Protection Clause?

Statement of the Case

Appellants are claimants under the New York State Home Relief program. The program is state funded and provides assistance to persons ineligible for federally funded programs. Under the program a standard of need is determined according to the number of persons in a household.

If no member of the household is employed, the household receives a grant equal to the standard of need. If

a member of the household is employed, the household receives a cash allowance to supplement the earnings. The allowance is equal to the difference between the standard of need and the net earned income of the household after deduction of work-related expenses.*

This case concerns a state law limitation on the amount of work-related expenses which may be deducted. Under the provisions challenged by appellants, the maximum which can be deducted for work-related expenses is $80 per month.

Appellants claim the $80 limit on deductions violates their rights to equal protection of the law. They purport to represent classes of people (a) with work-related expenses of more than $80 whose net income would result in eligibility for home relief but for the statutory limitation; and (b) with work-related expenses for more than $80 but whose benefits are reduced by the $80 limitation.

POINT I

The appeal must be dismissed for appellants' failure to timely docket the appeal.

Appellants have docketed their appeal out of time. The notice of appeal was dated November 12, 1976; the case was docketed January 14, 1977, some sixty-three days later. Since the time for docketing the appeal is only 60 days in this case (Supreme Court Rule 13[1]), appellants are three days out of time. The motion to dismiss this appeal pursuant to Rule 14(2) of this Court should be granted. As this Court has said, ". . . if there are to be

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* These expenses include (1) all non-personal work expenses such as union dues, costs of tools, materials, uniforms, and other special clothing; (2) all personal work expenses such as federal, state, and local taxes, group insurance, meals, and transportation; and (3) an allowance of $20 per month as a "special work expense."

rules, there must be some limit to our willingness to overlook their violation." *Pittsburgh Towing Co.* v. *Mississippi Valley Barge Line Co., et al.*, 385 U.S. 32 (1966). See *Shapiro* v. *Doe*, 396 U.S. 488 (1970) (appeal from three-judge court decision dismissed where appeal docketed two days late).

POINT II

The $80 ceiling on work-related expenses deductions for New York Home Relief recipients does not violate equal protection of the laws.

In finding that the $80 limitation on work expenses deductions did not violate the Equal Protection Clause, the majority below did nothing more than apply established principles of law to an uncomplicated set of facts.

There being no "suspect" class involved, the majority properly applied the traditional "rational basis" test and found that the State's desire to conserve limited public resources was sufficient to sustain the statute. *Massachusetts Board of Retirement* v. *Murgia*, 96 S. Ct. 2562 (1976); *Dandridge* v. *Williams*, 397 U.S. 471; *Jefferson* v. *Hackney*, 406 U.S. 535 (1972); *Frontiero* v. *Richardson*, 411 U.S. 677 (1973). This conclusion was correct. Conservation of limited public resources has long been specifically recognized as a legitimate state interest. E.g. *James* v. *Strange*, 407 U.S. 128, 141 (1972); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969).

Appellants assert that any such state interest does not save the statute because the $80 limitation is arbitrary and creates an invidious distinction among classes of Home Relief claimants; in short it is argued that the limitation is not a "principled" method of cost containment. This is simply not true. Far from being "arbitrary," the $80 limitation was based on an average, as appellants themselves

admit (Jurisdictional Statement, 26). The figure of $80 did not come out of the blue. Clearly if a line was to be drawn this was a fair and reasonable level at which to draw that line. Averaging has been upheld by this Court as a proper means of establishing benefits levels, even though some recipients may be adversely affected by the averaging. *Rosado* v. *Wyman*, 397 U.S. 397, 419 (1970).

This Court stressed in *Dandridge* that "in the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." *Dandridge, supra*, at 485; *Jefferson* v. *Hackney, supra*, at 546. It is not grounds for holding New York's $80 ceiling unconstitutional because it is imperfect or has harsh side effects on some individuals.

Appellants would no doubt complain no matter where the line was drawn. Appellants' argument taken to its logical conclusion would result in the proposition that no work expenses ceiling of any kind could be imposed. This is absurd since appellants themselves admit that the State is not obliged to provide *any* deductions for work expenses. See Appendix to Jurisdictional Statement, p. 6. Having chosen to provide deductions the State is certainly not obliged to provide *all* deductions. Necessarily, "every line drawn by a Legislature leaves some out that might have been included." *Village of Belle Terre* v. *Boraas*, 416 U.S. 1, 8 (1973). This does not mean that the line may not be drawn.

The work expenses deduction ceiling here is analogous to the flat grant limitations upheld by this Court in *Dandridge*. This Court in *Dandridge* rejected an equal protection argument that the flat grant discriminated against larger families. The same principles enunciated in *Dandridge* as supporting the constitutionality of the flat grant are clearly applicable here. Similarly this Court has held

that the States need not pay a full "standard of need" in public assistance cases but may pay only on a percentage basis to accommodate budgetary realities, so long as the actual standard of need is not obscured. *Rosado* v. *Wyman, supra,* at 413. Under this principle there is no reason in logic why New York may not put a reasonable limit on work-related expenses deductions in its Home Relief program.

In focusing on the objective of conserving resources as a rational purpose of the work expenses deductions ceiling, appellants have failed to point out that there are other rational bases for the statutes in question. Imposing a limitation on work expenses deductions encourages economy and efficiency in employment. Several work-related expenses, such as transportation, are peculiarly within the control of the recipient. The $80 ceiling is an incentive to reduce such expenses. By setting a realistic limit on work-related expenses, combined with sanctions (ineligibility) on those who voluntarily terminate their employment, the State encourages marginal workers to either work more efficiently or upgrade their employment qualifications.

Where several rational justifications for a statutory classification are apparent, a court's inquiry is at an end. The courts will not engage in an effort to ascertain the "primary" rational basis of a statute. *McGinnis* v. *Royster,* 410 U.S. 263, 274-276 (1973).

Clearly there are several rational justifications for the laws in question. On the principle that "[a] statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it" *McGowan* v. *Maryland*, 366 U.S. 420, 466 (1961), the New York work expenses deduction ceiling is unquestionably constitutional.

The cases relied on by petitioner are inapposite. *Anderson* v. *Burson*, 300 F. Supp. 401 (D. Ga., three-judge court, 1968), involved a Georgia regulation which discriminated

on the basis of *source* of income and *character* of employment. No such discrimination is involved here.

The other case relied on by appellants, *Hein* v. *Burns,* 402 F. Supp. 398 (S.D. Iowa, 1975 three-judge court), was reversed by this Court on January 11, 1977 (*Knebel* v. *Hein,* No. 75-1261 and *Burns* v. *Hein,* No. 75-1355, 45 U.S.L.W. 4083). In *Hein*, this Court upheld against an equal protection attack regulations which permitted a variety of flat deductions and which treated a transportation allowance as "income" in determining eligibility for food stamp benefits. The issues here are identical and this Court's reasoning in *Hein* supports in every respect appellees' position in this case.

The thrust of appellants' argument stated in another way seems to be that the Constitution of the United States has been violated by this $80 ceiling because it allegedly operates as a work disincentive in a culture where a work ethic is fundamental. Assuming *arguendo* that the ceiling operates as a work disincentive and assuming *arguendo* that a work ethic is fundamental to our society, it does not follow that the $80 ceiling on work expenses deductions violates the Constitution. The States in administering their public assistance programs are entitled to wide latitude. *Dandridge* v. *Williams, supra; Jefferson* v. *Hackney, supra.* The States may pursue one policy objective at the expense of another, and the wisdom of a State in pursuing a particular course is not for the courts to judge. In *Lavine* v. *Milne,* 424 U.S. 577 (1976), this Court upheld a state law designed to screen out the "indolent few" even though it also imposed an assumed heavy burden on the "industrious indigent." *Lavine* v. *Milne, supra,* at 587. This Court said that "New York nevertheless prefers its chosen course; and it is not for this Court to assay the wisdom of that determination." *Id.* The same principle applies here with equal force. The essence of appellants' argument is that the $80 ceiling is unwise. Such an argument is addressed to the wrong forum.

The fact that the courts are the wrong forum is proved in spectacular fashion by the obviously labored dissenting opinion. The dissent arrived at its conclusion only after a lengthy exploration of numerous studies and literature on the impact of various welfare programs on work incentive. Such a task was peculiarly a legislative one. The studies cited by the dissent (none of which concerned the work expenses ceiling in this case) do not even lead to the unequivocal conclusions for which they are so cavalierly and freely cited. On the contrary, the studies are characterized by qualifications which indicate that the effect on work incentive of a given income transfer program may be uncertain; that the effect may be different on different groups of people; that an increase in work incentive may result in a sharp rise in program costs; that necessary data is incomplete and inadequate; and that reform requires an overhauling of a whole complex of related programs, not just an attack on one aspect of one program.* Clearly this is a classic case calling for legislative, not judicial judgment if there is any call for a change.

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* For example, in the Townsend-Burke paper cited by the dissent (A28, A30) we are told in the introduction (p. 2) that the actual effect of income maintenance programs on work behavior is "uncertain." The New Jersey Income Maintenance Study, said by the dissent to be the "most significant available study" of the effects of benefit loss rates on work effort (A30), concluded (according to the same Townsend-Burke paper, at p. 33) that, despite an unfavorable benefit loss rate, husbands did not substantially change their work patterns. One contributor to the Garfinkel paper (cited by the dissent at A29-30) concluded (at 96) that major improvements on these studies required more refined data and more complicated models. These are only a few examples of many of the qualifications and caveats contained in the studies and literature cited by the dissent.

CONCLUSION

This appeal from the judgment below should be dismissed. In the alternative, the judgment below must be affirmed.

Dated: New York, New York, February 9, 1977.

Respectfully submitted,

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